

1 THE HONORABLE MARSHA J. PECHMAN
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 IN RE: WASHINGTON MUTUAL
11 MORTGAGE BACKED SECURITIES
12 LITIGATION

This Document Relates to: ALL CASES

Master Case No.: C09-0037 (MJP)

**DECLARATION OF ANNE BOX IN
SUPPORT OF PLAINTIFFS' RESPONSE
TO DEFENDANTS' MOTION TO
PRECLUDE USE OF UNTIMELY
DISCLOSED WITNESSES PURSUANT
TO FED. R. CIV. P. 37(c)(1)**

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DECL. OF ANNE BOX IN SUPPORT OF PLAINTIFFS'
RESPONSE TO DEFNS.' MOTION TO PRECLUDE USE
OF UNTIMELY DISCLOSED WITNESSES PURSUANT TO
FED. R. CIV. P. 37(c)(1)

Case No. C09-037 MJP

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1 I, Anne Box, hereby declare as follows under penalty of perjury pursuant to 28 U.S.C.
 2 §1746, that:

3 1. I am an attorney licensed to practice in the State of California. I am employed by
 4 Scott+Scott LLP, which, along with Cohen Milstein Sellers & Toll PLLC, is lead counsel in this
 5 action. I have been actively engaged in discovery in this case and, in that capacity, I am familiar
 6 with documents filed, served, produced and reviewed by Plaintiffs' counsel, their employees,
 7 contractors, and experts.

8 2. Defendants and J.P. Morgan Chase ("Chase") have produced approximately 30
 9 million pages of documents in this case, with the bulk of the production occurring in August and
 10 September 2011. During the final two months of fact discovery, Defendants produced 124,648
 11 pages which Plaintiffs undertook to review as quickly as possible. Plaintiffs took 22 of 24 fact
 12 witness depositions in this case during the period of September 2011 to February 2012, and
 13 defended five depositions taken by Plaintiffs. After the close of discovery on February 10, 2012,
 14 Defendants and Chase produced over 20,000 pages of documents.

15 3. On November 12, 2011, Plaintiffs served their initial disclosures on Defendants as
 16 mandated by Fed. R. Civ. Pr. 26(a) which revealed the knowledgeable individuals associated
 17 with Plaintiffs-investors, and information about the Defendants and their affiliates that counsel
 18 had learned through informal investigation of the facts of this case. At that time, Plaintiffs were
 19 not aware of the identities of Michelle Joans ("Joans"), Timothy Bates ("Bates"), Teresa
 20 Bondurant ("Bondurant"), Karen Fridley ("Fridley"), Denise Luedtke ("Luedtke"), and Diana
 21 Jeanty ("Jeanty").

22 4. Through discovery in this case and the bankruptcy proceedings for Washington
 23 Mutual Inc. ("WMI"), Plaintiffs learned Chase acquired the assets of Washington Mutual Bank
 24 ("WMB") from the FDIC in September 2008, for \$1.9 billion. These assets included WMB's
 25 wholly owned subsidiaries, Defendants Washington Mutual Capital Corporation ("WCC") and
 26 Washington Mutual Asset Acceptance Corporation ("WMAAC").

27 DECL. OF ANNE BOX IN SUPPORT OF PLAINTIFFS'
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1 5. As disclosed during the depositions taken in this case, many key witnesses
 2 formerly employed by WMI, WMB, WCC and/or WMAAC (collectively “WaMu”) were hired
 3 by Chase when it acquired WMB assets, including defendant David Beck and the head of the
 4 WMI Home Loans Division, David Schneider. Beck, head of WaMu’s Capital Markets group,
 5 reported to Schneider. David Schneider, among other witnesses, continues to be employed at
 6 Chase. Defendants at all times had access to Schneider, Beck and other individuals previously
 7 employed by WaMu who then went to work for Chase. These individuals could have readily
 8 identified relevant witnesses in this case, and Chase had possession of WCC and WMAAC
 9 documents that also identified key witnesses in the case.

10 6. The depositions of other key witnesses also revealed that Defendants in this case
 11 had ready access to information not available to Plaintiffs. Even witnesses not now employed by
 12 Chase, for example, Michael Aaknes and Cheryl Feltgen, were represented by counsel they had
 13 not retained, given that those witnesses testified they did not pay the fees for the attorney
 14 representing them at their depositions, and, in addition, they did not know who was paying the
 15 attorney fees. The only possible answer is that Defendants provided this representation and had
 16 informal access to these witnesses’ information. Additionally, John Drastal testified during his
 17 deposition that Chase was paying for his attorneys’ fees.

18 7. Defendants never updated Interrogatory No. 6, as required under Rule 26(e)(3), to
 19 “Identify all Persons with whom You discussed Your underwriting policies, procedures, or
 20 standards relating to the Certificates.” See Exhibits A and B to Declaration of Anne Box in
 21 Support of Plaintiffs’ Rule 7(g) Surreply (ECF No. 432).

22 8. Plaintiffs’ counsel in this case negotiated with plaintiffs’ counsel in the related
 23 case of *In re Washington Mutual, Inc. Securities, Derivative, & Erisa Litig.*, No. 2:08-md-1919-
 24 MJP (the “§10b case”) to obtain deposition transcripts and associated exhibits from eight of the
 25 individuals deposed in that litigation, including Michelle Joans and Timothy Bates, pursuant to
 26 agreed-upon terms for confidentiality. Plaintiffs in this action sent to John Pernick and Michael

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1 Paskin, the counsel at Bingham McCutchen LLP and Cravath, Swaine & Moore LLP, the
 2 attorneys signing off on the Motion to Produce Use of Untimely Disclosed Witnesses Pursuant to
 3 Fed. R. Civ. P. 37(c)(i) (ECF No. 428) for Defendants, copies of the transcripts and associated
 4 exhibits on January 3, 2012. *See* Ex. 1 attached hereto. During her deposition in the related
 5 case, Michelle Joans was represented by the firm of Stetler Duffy & Rotert, Ltd., a firm which
 6 also represented three other witnesses in the present case who are not currently employed by
 7 Chase. Both Joans's and Bate's names (combined) were mentioned over 70 times during
 8 depositions in this case.

9 9. Bates was a Senior Vice President of WMI in charge of Credit Risk management,
 10 and between January 2008 through June 2008, ran the Corporate Credit Review (the "CCR")
 11 group, the group which reviewed the performance of the Home Loans division and which wrote
 12 many of the reports Defendants offered in their summary judgment motion.

13 10. Given the difficulty in locating witnesses, in particular, the witnesses who worked
 14 for WMB as underwriters, I retained a private investigative firm in January 2012 because of the
 15 approaching deadlines for summary judgment and trial.

16 11. On April 12, 2012, Plaintiffs served Defendants with Lead Plaintiffs' Supplement
 17 to Fed. R. Civ. P. 26(a) Initial Disclosures which contained, among others, the names Teresa
 18 Bondurant, Karen Fridley, Diana Jeanty and Michelle Joans. On May 9, 2012, Plaintiffs served
 19 Defendants with Lead Plaintiffs' Second Supplement to Fed. R. Civ. P. 26(a)(1) which
 20 contained, among others, the names Tim Bates and Denise Luedtke. In order to avoid any claim
 21 of surprise on the part of Defendants, and because we were still in the process of identifying and
 22 narrowing the potential number of witnesses, I included in the supplemental disclosures all
 23 witnesses known to Plaintiffs at that time, including from their investigators, that might possibly
 24 possess information that supported Plaintiffs' claims in this case.

25 12. In an effort to compromise and avoid Court intervention, Plaintiffs' counsel
 26 proposed by email to meet and confer in response to Defendants' Motion to Preclude Use of

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1 Untimely Witnesses and offered to narrow the list of potential witnesses contained in the
2 supplemental disclosures to designate six for use at trial. *See* Ex. 2. During a telephone call with
3 Defendants' counsel, we again offered to narrow the list of potential witnesses to Joans, Bates,
4 Jeanty, Luedtke, Bondurant and Fridley. Counsel for Defendants, however, refused to amend
5 their motion, even with respect to the use of Joans and Bates at trial.

6 I declare under penalty of perjury that the foregoing is true.
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8 Executed at San Diego, CA on June 11, 2012.
9

10 /s/ Anne L. Box
11 Anne L. Box
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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2012, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 11, 2012.

/s/ Anne L. Box

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